



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

SANITARY LEGISLATION.

COURT DECISIONS.

SUPREME COURT OF VERMONT.

Morbidity Reports—Failure of Physician to Report a Case—Evidence.

STATE v. PIERCE, 88 Atl. 740. Decided Oct. 13, 1913.

The respondent, a physician, was convicted in the Windsor County (Vt.) court. He was charged with failure to report to the local health officer a case of diphtheria which he attended. The conviction was sustained on appeal. Portions of the opinion which relate to questions of legal procedure are omitted.

POWERS, J.: This respondent was convicted under Public Statute 5454,¹ which requires an attending physician to report to the health officer known or suspected cases of communicable diseases dangerous to the public health. The illness directly involved was that of Pearl, infant daughter of William S. Newton, of Tyson, a small village in the town of Plymouth, who was attended by the respondent on several occasions between January 3 and 8, 1911, and who died on the 9th from diphtheria, as the evidence tended to show.

From the very necessities of the case, the State was obliged to rely upon circumstantial evidence to prove that the respondent knew or suspected that Pearl Newton's case was one of diphtheria. It was therefore proper and legitimate to show that other cases of this disease had existed in Tyson in the previous months of October and November; that the houses wherein these cases existed were quarantined with a placard thereon bearing in large letters the word "Diphtheria"; provided, of course, that there was evidence tending to show that the respondent knew about it, or that the circumstances were such that the jury could reasonably draw therefrom the inference that he knew about it. His knowledge of these facts was not the ultimate fact to be proved, but if established bore directly upon what his subsequent knowledge or suspicion would be when called to treat the Pearl Newton case. So the evidence regarding the cases of diphtheria in the Coolidge and Merrill houses and elsewhere in the community, and that the houses were placarded as stated, was properly received, for the evidence abundantly showed that the respondent was in the village at the time, and in such circumstances as to make it almost unbelievable that he failed to observe the diphtheria placards. Whether he did in fact see them was a question for the jury. But the fact that positive evidence thereof was not at hand did not render the evidence referred to inadmissible.

* * * * *

Dr. Haselton was a witness for the State. He was asked a hypothetical question as follows: "If you should be called into a family where one of the family complained of a sore throat—the mother—and there was a child 2 years old that was ill, had difficulty in breathing, and there had been cases of diphtheria in the immediate vicinity from four to six weeks before, and one member of the family, with whom another

¹ Public Health Bulletin No. 45, p. 151.

member of the family had been at the time, had died of diphtheria, would you naturally suspect the presence of any particular disease, and if so, what?"

To this question the respondent objected as not warranted by the testimony. This meant, of course, that the evidence did not sustain the assumed facts. * * * The court suggested that it was not a question what the witness would naturally suspect, and the State's attorney modified the question by asking, "What would an ordinary practicing physician naturally suspect under such circumstances?" Thereupon respondent's counsel said: "We desire an exception, because it is not a proper question as framed." The witness answered that he thought he would suspect diphtheria. To the question as finally admitted, the only objection was to its form. But this is a matter within the discretion of the court and not subject to review. Besides, the particular in which the question was improper was not pointed out, so there was nothing specific for the court to rule upon.

It appeared that Myrtie Newton, a sister of Pearl, was sick at the house of a neighbor, and died there November 8, 1910. After her burial, and before Pearl's sickness, by direction of the State authorities, Drs. Stone and Dalton, of Burlington, caused her body to be exhumed, and in the presence of the respondent performed an autopsy thereon, and showed the respondent the condition of the throat. This was on November 19. The organs removed from the body were shown Dr. Kidder, a witness for the State and a member of the State board of health, and he testified as to what the organs were, and that the larynx showed a diphtheritic membrane. This answer was objected to; but no ground of objection was stated, so we take no time with it. The witness was then asked, "Would that (diphtheritic membrane) be apparent to an ordinary practicing physician?" This question was objected to, because it was "having the witness take the place of the jury." The question was then modified slightly, and, subject to exception, the witness answered that he thought it would.

* * * * *

We find the admission of the testimony to be without error. As we have seen, the autopsy was about 10 days after the death of Myrtie Newton. We must assume that the organs had been in a preservative liquid since, for it is common knowledge of which we may take notice that such is the means employed by the medical profession. The respondent was present when they were removed and had a fair chance to observe their condition and form a judgment as to what it indicated. That appearance might mean nothing to an ordinary man and yet be highly significant to a physician. There is no doubt whatever that the witness could state what the appearance of the larynx indicated to him; the only question on which there can be any doubt is whether it was permissible to allow the expert to add the statement which, fairly interpreted, meant that the indications of a diphtheritic condition were so plain as to be apparent to an ordinary practitioner. That the answer was an inference drawn from the organ before him, coupled with his knowledge of the state of professional attainment in that vicinity, may be admitted, without putting the trial court in error. Inferences from observed facts are admissible when the inferred fact itself is relevant, and the constituent facts can not adequately be placed before the jury. (*Clifford v. Richardson*, 18 Vt. 620; *Williams v. Norton Bros.*, 81 Vt. 1, 69 Atl. 146.) Here the fact itself was relevant, because if this larynx on November 19 indicated that Myrtie had had diphtheria, it rendered more probable the ultimate fact that in January following the respondent knew or suspected that Pearl had it.

That the constituent facts could not adequately be placed before the jury is equally plain. For, though the witness could have pointed out to the jury the appearances which indicated to his trained eye their diphtheritic character, their full significance would not be appreciated by the jury until they knew whether they meant the same thing to other doctors. Without this, the jury might reason that, though Dr. Kidder might recognize the indications, one less skilled, though a doctor, might not. Indeed, the respondent's brief contains an implied admission of this, for the very ground taken

is that Dr. Kidder's statement can not be true, because he speaks as a surgeon, while the respondent is a physician, and a physician can not be expected to recognize post mortem conditions and indications. How much more, then, would the jury, wholly untrained in such matters, require the assistance of an expert to appreciate the significance of the physical appearance of this diseased larynx.

In sustaining the admission of this evidence we are doing no more than is always done in a malpractice case, wherein a duly qualified physician is allowed to testify to the local standard of professional skill, and that a given course of treatment did or not meet its requirements, though the witness be of more professional prominence than the doctor whose treatment is in question and practices elsewhere. (*Willard v. Norcross*, 86 Vt. 426, 85 Atl. 904.) In such cases the expert is giving the jury information as to the progress and condition of local professional knowledge, and that is all that was done here.

Other medical witnesses testified to like effect, but need not be specially referred to.

* * * * *

There was no error in admitting the reports from the State laboratory on the cultures taken from the throat of Leroy Hyde. These were taken by the respondent between November 14 and 26, 1910, and sent by him, and the reports came back to him. Some, he admitted, were positive. They had the same bearing upon the main issue that the other evidence regarding the previous cases of diphtheria at Tyson had—they added to the sum of the respondent's knowledge another circumstance which a thoughtful juror would consider before deciding the main question.

* * * * *

Judgment that there is no error, and that the respondent takes nothing by his exceptions.

Let execution of sentence be done.

COURT OF APPEALS OF KENTUCKY.

Local Board of Health—Powers of—Regulations—Bottling of Milk.

BOARD OF HEALTH OF COVINGTON ET AL. *v.* KOLLMAN, 160 S. W., 1052. Decided December 9, 1913.

Plaintiff, a dairyman, refused to comply with the regulation of the Board of Health of Covington, Ky., relative to the bottling of milk, claiming that it was invalid, and brought suit to enjoin the board from prosecuting him for selling milk without a permit and to compel the issuance to him of a permit. He was successful in the circuit court, but the case was reversed on appeal. The opinion is given in full.

CLAY, C.: In the year 1909 the general council of the city of Covington enacted an ordinance covering the sale of milk and other dairy products and regulating the sanitary condition of dairies and milk depots and the condition and use of utensils, vehicles, etc., used in handling, manufacturing, or sale of milk and dairy products in Covington, Ky., and repealing certain ordinances of the city of Covington. The ordinance conferred on the board of health powers of inspection and examination. It further provided as follows: "Upon the board of health of the city of Covington being satisfied that the place or places where the milk or milk products are to be kept or offered for sale, or from which they are obtained, are sanitary, or that the cows from which said milk is obtained are free from disease and kept in a sanitary place and manner, said board of health shall grant a permit to the applicant conditioned upon his compliance with the terms of this ordinance and the rules and regulations of the State board of health and board of health of the city of Covington. Said permit may be revoked at any time by the board of health of Covington, Ky., should the holder thereof fail or refuse to comply with the provision of this ordinance."